

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chris Olmsted	Team: Squad #9	CCRB Case #: 201909647	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 09/07/2018 9:00 PM	Location of Incident: [REDACTED]	Precinct: 70	18 Mo. SOL 3/7/2020	EO SOL 3/7/2020	
Date/Time CV Reported Mon, 11/04/2019 8:18 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 11/04/2019 8:18 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Estharlin Lopez	17248	959766	070 PCT
2. Officers			
3. LT Derek Epstein	00000	938436	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Sean Callender	12756	934565	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Derek Epstein	Force: In front of § 87(2)(b) in Brooklyn, Lieutenant Derek Epstein used physical force against § 87(2)(b).	[REDACTED]
B.POM Estharlin Lopez	Abuse: In front of § 87(2)(b) in Brooklyn, Police Officer Estharlin Lopez searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
C.LT Derek Epstein	Abuse: In front of § 87(2)(b) in Brooklyn, Lieutenant Derek Epstein searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
D.POM Estharlin Lopez	Abuse: At the 70th Precinct stationhouse, Police Officer Estharlin Lopez searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
E. Officers	Abuse: At an unknown location, officers damaged § 87(2)(b)'s property.	[REDACTED]

Case Summary

On November 4, 2019, § 87(2)(b) filed this complaint with the Civilian Complaint Review Board via the online form.

On September 7, 2018, at approximately 9:00 p.m., Police Officer Estharlin Lopez and Lieutenant Derek Epstein, both then of the 70th Precinct, stopped § 87(2)(b)'s vehicle for driving while talking on his cell phone in front of § 87(2)(b) in Brooklyn. In the course of that stop, Lieutenant Epstein used physical force against § 87(2)(b) (**Allegation A: Force, § 87(2)(g)**) and PO Lopez and Lieutenant Epstein searched § 87(2)(b)'s vehicle (**Allegations B and C: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) and his vehicle were removed to the 70th Precinct stationhouse where his vehicle was impounded and searched, including a safe that had been in the trunk (**Allegation D: Abuse of Authority, § 87(2)(g)**). When § 87(2)(b) recovered his vehicle from the NYPD, it had been damaged (**Allegation E: Abuse of Authority, § 87(2)(g)**).

This incident resulted in the arrest of § 87(2)(b) for § 87(2)(b)

[BR 01].

No video footage was obtained from this incident.

Findings and Recommendations

Allegation (A) Force: In front of § 87(2)(b) in Brooklyn, Lieutenant Derek Epstein used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) did not remain in his vehicle for the duration of the traffic stop. § 87(2)(b) and the officers were interviewed more than a year after the incident, which they all drew attention to during their interviews.

In his initial narrative, § 87(2)(b) stated that when the officers approached his vehicle, Lieutenant Epstein opened § 87(2)(b)'s driver-side door and attempted to pull him from the vehicle. § 87(2)(b) had yet to put his car into drive, and it began to roll forward when his foot was pulled off the brake pedal. § 87(2)(b) struggled back into his vehicle and put the car in park. Lieutenant Epstein then pulled him fully from the vehicle.

In his sworn statement to the CCRB, § 87(2)(b) remained consistent in his narrative.

In his testimony to the CCRB, PO Lopez stated that he and Lieutenant Epstein were on the driver's side of § 87(2)(b)'s vehicle when § 87(2)(b) exited it voluntarily. When asked directly, he stated that he did not recall whether Lieutenant Epstein used physical force against § 87(2)(b).

Lieutenant Epstein's statement was consistent with PO Lopez's.

§ 87(2)(g)

Allegation (B) Abuse of Authority: In front of § 87(2)(b) in Brooklyn, Police Officer Estharlin Lopez searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (C) Abuse of Authority: In front of § 87(2)(b) in Brooklyn, Lieutenant Derek Epstein searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Lopez asked § 87(2)(b) for his license and that § 87(2)(b) did not immediately provide his license to the officers. It is undisputed that PO Lopez searched the immediate driver's seat area of § 87(2)(b)'s vehicle. It is undisputed that pepper spray and a knife were recovered from the vehicle. § 87(2)(b) and the officers were

interviewed more than a year after the incident, which they all drew attention to during their interviews.

The arrest report PO Lopez prepared for the incident states that a search was conducted after marijuana was noticed in plain view [BR 01].

The Criminal Court complaint notes that a switchblade and two cans of pepper spray were recovered from underneath the driver's seat but does not note what led the officers to search the vehicle and makes no mention of marijuana or the odor of marijuana, aside from the marijuana recovered from the safe in the trunk. [BR 02]

In his CCRB testimony, PO Lopez stated that upon approaching the vehicle, he detected a strong odor of marijuana coming from the vehicle. When he asked § 87(2)(b) for his license, § 87(2)(b) stated that his wallet was under his seat, but he did not want to reach for it because there was a knife next to it. § 87(2)(b) gave PO Lopez permission to search a compartment under the driver's seat to retrieve his wallet. Inside of the compartment along with the wallet was an illegal knife and a can of pepper spray. PO Lopez stated that he did not search any other parts of the vehicle. PO Lopez did not recall seeing marijuana in plain view during the traffic stop and viewing the arrest report did refresh his recollection on that point. He stated he found no contraband in the cab of § 87(2)(b)'s vehicle other than the knife and OC spray.

Lieutenant Epstein's statement was generally consistent with PO Lopez's, except that he did not recall who searched the driver's side area of the vehicle and found the knife and the pepper spray and he did not account for the smell of marijuana. Lieutenant Epstein also did not recall whether he or PO Lopez searched any other parts of the vehicle.

§ 87(2)(b) confirmed that officers searched the driver's side of his vehicle, where they found his wallet; however, he denied consenting to a search of his vehicle and could not recall whether he told the officers where his wallet might have been. § 87(2)(b) stated that he was faced away from his vehicle when he heard PO Lopez state that he had found pepper spray. Afterwards, Lieutenant Epstein searched the passenger side of the vehicle. During his CCRB interview, § 87(2)(b) acknowledged that there may have been guns, knives, pepper spray, and marijuana in the vehicle but he did not specify where.

§ 87(2)(g)

Allegation (D) Abuse of Authority: At the 70th Precinct stationhouse, Police Officer Estharlin Lopez searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (E) Abuse of Authority: At an unknown location, officers damaged § 87(2)(b)'s property.

It is undisputed that § 87(2)(b)'s vehicle was vouchered as arrest evidence, and the safe in his trunk was searched. It is also undisputed that § 87(2)(b)'s car was in NYPD custody for over a year.

§ 87(2)(b)'s arrest report notes that an inventory search was conducted and property vouchers for § 87(2)(b)'s arrest itemize the contents of his vehicle [BR 01, 12].

In his sworn statement to the CCRB, § 87(2)(b) stated that when he reclaimed his car from the NYPD, there was damage to the tires, bumpers, hydraulic system, and paint of the vehicle.

§ 87(2)(b) provided photographs he took of his vehicle while it was impounded and shortly after he reclaimed it. The pictures appear to indicate flat tires, some damage to his rear bumper, and some damage to the car's paint in that same area. [BR 03-08]

In his testimony to the CCRB, PO Lopez stated he drove § 87(2)(b)'s vehicle from the scene of the traffic stop to the stationhouse but denied damaging the vehicle. He further stated that when § 87(2)(b) did not give him access to the safe in the vehicle, he called ESU to open the

safe. ESU used tools to open the safe.

In his testimony to the CCRB, Lieutenant Epstein denied damaging § 87(2)(b)'s vehicle.

Patrol Guide Procedure 218-13 notes that whenever any property comes into the custody of the NYPD, an inventory search will be conducted. The interior of the vehicle should be searched thoroughly including any locked containers such as a safe. The locked containers should not be forced open if doing so would cause more than minimal damage [BR 09].

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Lopez has been a member of service for 4 years and has been a subject in 4 other CCRB complaints and 12 other allegations, none of which was substantiated. § 87(2)(g)
- Lieutenant Epstein has been a member of service for 14 years and has been a subject in 8 other CCRB complaints and 17 other allegations, none of which was substantiated.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City [BR 11].
- As of the date of this report, the Notice of Claim regarding this complaint has been requested from the New York City Office of the Comptroller and will be added to the case file upon receipt.

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date